IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.66 OF 2002

IN

SUIT NO.1891 OF 2000

M/s.Videocon Industries Ltd. ...Petitioner.

vs.

1.Akar Laminators Ltd. & others. ...Respondents.

Mr.R.D.Soni with Mr.Sayed i/b. Ram & Co., for Petitioner.

Mr.M.M.Vashi, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 13th June,2007.

P.C.:-

1. The plaintiff in suit no.1891 of 2000 has filed this contempt petition contending that the

respondent nos. 2 and 3 have committed breach of the undertaking which is recorded in the consent terms dated 9.11.2001 and the order passed by the Court dated 9.11.2001 disposing of the suit in terms of the consent terms. The plaintiff had filed a suit against the respondents for a money decree. In that suit, the petitioner claimed that money is owed to it by the respondent no.1 and that the present respondent nos. 2 and 3 who are the Directors of respondent no.1 are guarantors and therefore, the money is recoverable from them also. In that suit the consent terms were filed which are signed by the manager of the respondent no.1 and also by the Advocate who was appearing for all the respondents. On the consent terms being presented before the Court, the Court made an order on 9.11.2001 taking the consent terms on record and disposing of the suit in terms of the consent terms. In the consent terms it is stated that in case the defendants pay the amount of Rs.3,00,00,000/- on or before 31.12.2001 the claim in the suit would be marked as fully satisfied. But if the defendants do not pay the amount on or before 31.12.2001 the plaintiff shall become entitled to

recover the entire amount which is claimed in the suit. The defendant nos.2 and 3 who are the Directors of defendant no.1 have personally undertaken that the consent terms will be complied with, they have also undertaken that till the dues of the plaintiff are paid, they will not transfer their property. It may be pointed out here that it is not the case of the petitioner that the respondent nos. 2 and 3 have transferred their property. According to the petitioner, the respondent nos. 2 and 3 have not abide by their undertaking to comply with the consent terms. The learned Counsel appearing for petitioner submits that by the consent terms, an obligation was cast on all the defendants to pay the amount of Rs.3,00,00,000/- on or before 31.12.2001. The respondent nos. 2 and 3 had undertaken to comply with the consent terms and therefore, they were under an obligation either to see that the respondent no.1 pays the amount of Rs.3,00,00,000/- on or before 31.12.2001 or they should have themselves paid the amount. By not making the payment of the amount, the respondent nos. 2 and 3 have committed willful breach of their undertaking given to the Court and

therefore, they are guilty of having committed civil contempt of this court.

2. On behalf of the respondent nos. 2 and 3 it is submitted that there was an agreement reached between the parties that if the amount of Rs.3,00,00,000/- is paid by the defendant no.1 on or before 31.12.2001 the suit claim will not survive and and will be treated as fully satisfied. According to the respondents, the consequence of failure of defendant no.1 to make payment of Rs.3,00,00,000/- on or before 31.12.2001, was that the plaintiff will be entitled to a decree as prayed for. According to the respondents, by the consent terms, there is no decree passed. It is submitted that the undertaking that was given by the respondent nos. 2 and 3 was not given to the Court and it cannot be said that their undertaking is to pay the amount of Rs.3,00,00,000/- on or before 31.12.2001. It is further submitted that it is the case of the petitioner that as a consequence of failure of the respondents to pay the amount of Rs.3,00,00,000/- before 31.12.2001, a decree has been passed by the Court for the amount

claimed in the suit against the defendants. If that is so, the remedy of the petitioner is to execute the decree and therefore, this contempt petition is not maintainable. It is submitted that there is substantial defence available to the respondents in the execution proceedings. The first defence, according to the respondents, which is available to the respondents is that there is no decree passed automatically as a consequence of failure of the defendants to pay the amount of Rs.3,00,00,000/- by 31.12.2001. According to the petitioner, on failure of the respondents to pay the amount of Rs.3,00,00,000/-, the petitioner will have to apply for decree and it is thereafter that the decree will be passed. It is further submitted that the appeal of respondent no.1 company against the order rejecting his reference before the BIFR is pending and therefore, even if it is assumed that there is a decree passed, in view of the provisions of Sick Industrial Companies Act (SICA), the decree is unexecutable. It is submitted that though, according to the plaintiff, now the decree has been passed in favour of the plaintiff, therefore, the plaintiff has

to file execution proceedings, without instituting the recovery proceedings contempt petition cannot be entertained. The learned Counsel appearing for respondent nos. 2 and 3 relied on the judgment in the case of “Mohammad Salam Anamul Haque Vs. S.A.Azmi and others, 2001(1) Mh.L.J. 24”. The learned Counsel further submits that the consent terms is the agreement reached between the parties. There is no undertaking given by the respondents to the Court, in any case in the order no such undertaking has been accepted by the Court. The learned Counsel relied on the judgment of the Supreme Court in the case “Rita Markandey V. Surjit Singh Arora, AIR 1997 Supreme Court 2174” in support of his submission that by the Court merely accepting an agreement reached between the parties, the proceedings under the contempt of Court Act cannot be taken out. The learned Counsel appearing for petitioner relies on two judgments of the Supreme Court, one in the case of “Bank of Baroda Vs. Sadruddin Hasan Daya and another, AIR 2004 Supreme Court 942”, and the judgment in the case of “Rama Narang Vs. Ramesh Narang & another, 2006(3) All Maharashra (S.C.) 143 to contend that merely because

the decree passed by the Court is executable, the contempt petition cannot be thrown out.

3. Now it is common ground that though according to the petitioner, failure of the respondents to pay the amount of Rs. 3,00,00,000/- on or before 31.12.2001 has resulted in a decree being passed in favour of the petitioner, to this date the petitioner-plaintiff has not filed any execution proceedings, though the learned Counsel appearing for plaintiff-petitioner has stated before me that the plaintiff-petitioner has applied for a drawn up decree and that decree is not yet supplied to them.

4. Three clauses of the consent terms are relevant for deciding this petitioner. They are clause (2), clause (3) and clause (5). Perusal of clause (2) shows that it merely contains an agreement between the parties that if the defendants pay to the plaintiff an amount of Rs.3,00,00,000/- on or before 31.12.2001, the suit claim will not survive. Clause (3) provides for consequences of failure on the part of the defendants to abide by the agreement reached

between the parties which is incorporated in clause (2). Clause (3) provides that in that event the plaintiff shall be entitled to recover the entire decreetal amount as claimed in the suit and there shall be a decree passed by the Court in accordance with law as per the reliefs claimed. Though, according to the respondents, a decree does not get passed automatically on failure of defendants abiding by the agreement contained in clause (2), I do not suppose to go into that controversy as that question can be raised by the defendants in execution proceedings. For the purpose of this contempt petition, in my opinion, it can be assumed that as a consequence of failure of the defendants to abide by the agreement contained in clause (2) a decree gets passed in favour of the plaintiff for the entire claim made in the suit. The submission of the plaintiff that by the first part of the undertaking contained in paragraph 5, the respondent nos. 2 and 3 have undertaken to make payment of Rs.3,00,00,000/- by 31.12.2001, is totally devoid of merit. The consent terms themselves provide for consequence on failure of the defendants to make payment of

Rs.3,00,00,000/- by 31.12.2001 and therefore, it cannot be said that the respondent nos. 2 and 3 have undertaken to make payment of the amount of Rs.3,00,00,000/- on or before 31.12.2001 or that contempt proceeding can be initiated against them for not making that payment within the time stipulated. In my opinion, the undertaking contained in paragraph 5 cannot be read to mean that the respondent nos. 2 and 3 have undertaken to make payment of the amount of Rs.3,00,00,000/- by 31.12.2001. It was alternatively submitted on behalf of the plaintiff that by the undertaking given in paragraph 5, the respondent nos. 2 and 3 have undertaken to satisfy the decree which gets passed as a consequence of defendants' failure to make payment of Rs.3,00,00,000/- on or before 31.12.2001. The debate before me was whether this undertaking given to the Court was merely an agreement reached between the parties or was an undertaking given to the Court. Perusal of the order passed on the consent terms shows that in that order the Court has not referred to any undertaking and has not accepted any undertaking. The question as to what undertaking can

be said to be an “undertaking” given by the litigant to the Court has been considered by the Supreme Court in its judgment in the case of "Rita Markandey” referred to above. In that case there was a decree of eviction passed against the tenants and when the matter was before the Supreme Court, the Supreme Court while dismissing the appeal recorded that it is agreed between the parties that the tenants will get time to vacate till 31.3.1995 and this time was granted subject to certain undertaking to be filed by the tenant. The undertaking was not filed by the tenant. The Supreme Court has considered this situation in paragraph 12 of its order. The Supreme Court in paragraph 12 has observed thus:-

> “12. Law is well settled that if any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof it amounts to civil contempt but since in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being

punished for breach thereof does not arise. However, in our considered view even in the a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of Court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the

> unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be held liable for contempt for alleged breach of the above order."

The Supreme Court has, thus, held that when the Court merely records an agreement reached between the parties, a breach of that agreement committed by the parties does not amount to willful violation of the undertaking given to the Court. In my opinion, the present case is of similar nature. The parties have reached the agreement among themselves and that agreement has been merely recorded by the Court and the Court has disposed of the suit in terms of the agreement between the parties.

5. It is the contention of the petitioners that there is a decree passed in their favour. That decree, even according to the plaintiff also, is

executable. It is nobody's case that merely because the decree is executable the proceedings under the contempt of Court's Act cannot be taken out. But when the remedy of execution of a decree is available the Court can take action under the contempt of Courts Act only on being satisfied that the violation of the order is such that if it is proved it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere in the due course of justice. This law has been clearly laid down by the Supreme Court in the case of “Rama Narang Vs. Ramesh Narang & another, 2006(3)All MR(S.C.) 143” referred to above. The relevant observations are to be found in paragraph 15 of the judgment of the Supreme Court. They read as under:-

> “15. All decrees and orders are executable under the Code of Civil Procedure, Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Act provided the Court is satisfied

> that the violation of the order or decree is such that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice."

Perusal of the above paragraph of the judgment of the Supreme Court shows that where remedy of execution is available the Court can entertain the contempt petition only on recording satisfaction that if Court finds that undertaking has been willfully violated or oder has been willfully violated, a sentence will have to be imposed on the contemner. Section 13 of the Contempt of Courts Act has been referred to by the Supreme Court. Section 13 of the Contempt of Courts Act reads as under:-

> "13. Contempts not punishable in certain cases.- Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice."

Perusal of Section 12 of the Act shows that when a Court finds that a person is guilty of its contempt it can impose punishment of undergoing simple imprisonment for a term which may extend to six months and the Court can also impose fine which may extend to Rs.2000/-. Section 13 of the Act has relevance only when the sentence is to be imposed. In other words, the law laid down by the Supreme Court in "Rama Narang" case appears to be that when a remedy of execution is available and if the Court finds that even if violation is established only a fine can be imposed then the Court should not entertain the contempt petition, but if the Court finds that if the contempt is established and sentence will have to be awarded then the Court can entertain the contempt petition. In other words, though a remedy of execution is available, the Court can still entertain the contempt petition only in the cases of grave nature where the Court finds that the contempt is of such nature that it interferes with the administration of justice. The second aspect, in my opinion, that is relevant is that the

interference or obstruction in the course of justice amounts to a criminal contempt, and therefore, in view of the judgment of the Supreme Court, in my opinion, it can safely be said that according to the Supreme Court the contempt petition can be entertain by the Court though the remedy of execution is available if the Court finds that the contemner is guilty of blatant violation of the Court's order without there being any defence available to him. In other words, the violation of the order should be clear and no defence should be available to the contemner. But if Court finds that though the order of the Court has been violated, there is substantial defence available, then the Court instead of entertaining the contempt petition should leave the parties to follow their remedy of execution where all the defences that may be available to the judgment debtor can be raised by him. Looking to the present case from that point of view, it is obvious that there are defences available to the respondent nos. 2 and 3. I find substantial force, as indicated above, in their submission that what is recorded by the Court is merely an agreement between the parties and

there is no undertaking given to the Court. As indicated above, the order passed by the Court also does not show that the undertakings given in the consent terms have been accepted by the Court. It was also contended that in view of the provisions of Sick Industrial Companies Act even assuming that there is a decree passed, the decree is not executable. It was also contended that in the proceedings under the SICA Act the plaintiff is participating where the scheme for repayment of all the debts is being worked out.

6. Taking overall view of the matter therefore, in my opinion, it will not be appropriate to entertain the petition specially because it appears that it cannot clearly be said that they have deliberately and willfully violated any order made by this Court or any undertaking given by them. The petition is disposed of. It is clarified that the observations that have been made in the order are only for the purpose of disposing of this contempt petition and the contentions that were raised in this petition if raised before the executing Court, the

executing Court shall decide them on their own merit without being influenced by these observations. The petition is disposed of. No order as to costs.